IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3188 OF 2004

M/s. Allanasons Ltd. .. Petitioner
V/s.
The Assistant Commissioner of
Income Tax Circle 1(1) Mumbai and Ors. .. Respondents

Mr. R.A. Dada, Sr. Advocate with Mr. P.A. Savant, Mr. J. Jain and Ms. Trupti M. Kapadia i/b. M/s. Joy Legal Consultants for the Petitioner
Mr. R.V. Desai, Sr. Advocate with Mr. A.S. Rao for the Respondents

CORAM : S. RADHAKRISHNAN &
J.P. DEVADHAR, JJ.
DATED : 28.02.2005

P.C.:-

1. Rule. Rule made returnable forthwith. Heard the learned counsel for the Petitioner and the Respondents. The learned counsel for the Respondents waives service. By consent, taken up for hearing.

2. By this Petition, the Petitioner is basically challenging the Notice issued under section 148 of the Income Tax Act, whereby the assessment has been sought to be re-opened for the Assessment Year 1999-2000. The assessee had raised objections with regard to the same, and the same has been rejected by the Deputy Commissioner of Income Tax by his order dated 7.12.2004, which order is being challenged before us. The very first paragraph of the said order mentions that the decision in the case of IPCA Laboratories case, which was applicable to the Petitioner's case, was not available at the time of passing the assessment order. However, perusal of the

assessment order, clearly indicates that the assessing

officer has taken into account the said judgment of Bombay High Court in the case of IPCA Laboratories in paragraph 5.6 of the assessment order. Therefore, rejection of the objection & justifying the re-opening on the ground that at the time of the assessment order, the decision in the case of IPCA Laboratories was not available is wholly incorrect. Moreover, when the assessee had claimed trading loss of Rs. 3,04,64,126/-, how the assessing officer even after applying the ratio in the case of IPCA Laboratories could restrict it to Rs. 88,51,298/- is not explained. Apart from the above, it is not clear from the order as to whether the assessing officer has dropped the proceedings regarding the amount of Rs. 12.27 Crores sought to be included in the income as more particularly set out in the reason for re-opening the assessment. Over and above, we find that there is no discussion with regard to restricting the trading loss to Rs. 88,51,298/-, whereas the assessee has claimed Rs. 3,04,64,126/- as trading loss and there is also no discussion with regard to Rs. 12.27 crores, which is the net excess difference credited to profit and loss account.

3. Under the aforesaid facts and circumstances, and in view of the above patent errors in the impugned order, we quash and set aside the said order dated 7.12.2004 and

remand back the matter to the Deputy Commissioner of Income Tax to reconsider the entire issue afresh after

affording an opportunity of personal hearing to the Petitioner. All the contentions and submissions of the Petitioner and the Respondents are kept expressly open. It is made clear that the assessment proceedings shall continue only after the aforesaid objections are decided by the Deputy Commissioner of Income Tax as aforesaid and in the event, if the decision were to be adverse to the Petitioner, the same shall not be given effect for a period of two weeks from the date of communication of the decision to the Petitioner. Rule is made absolute in the above terms.

(S. RADHAKRISHNAN, J.)

(J.P. DEVADHAR, J.)